BONIFAC LOBO ROBERT LOBO v. DR ZUBAIDAH IBRAHIM & ORS

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
BADARIAH SAHAMID JCA
MARY LIM JCA
[CIVIL APPEAL NO: W-02(NCVC)(A)-240-02-2016]
21 MARCH 2018

LAND LAW: *Strata title – Joint management body – Joint management committee – Establishment – Members of joint management committee less than five – Whether remaining members had power to elect new members pursuant to para. 2(2) of Building and Common Property (Maintenance and Management) Act 2007 – Extraordinary General Meeting ('EGM') called pursuant to Building and Common Property (Maintenance and Management) Act 2007 which was repealed at time of EGM – Whether election of joint management committee members at EGM valid*

STATUTORY INTERPRETATION: *Interpretation of Acts – Intention of Legislature – Section 11 Building and Common Property (Maintenance and Management) Act 2007 – Whether correctly interpreted by High Court Judge*

The appellant and the respondents were owners of their respective parcels in a property known as 'JMB Silverpark Resort, Bukit Fraser'. Under s. 4 of the Building and Common Property (Maintenance and Management) Act 2007 ('the 2007 Act'), a joint management body ('JMB') was established. The JMB then elected a joint management committee ('JMC'). Pursuant to an annual general meeting ('AGM'), the appellant together with four others were elected members of the JMC. Under s. 11(1) of the 2007 Act, the members of the JMC hold office for a period not exceeding three years or until the dissolution of the JMB in accordance with s. 15, whichever earlier. On November 2014, three of the five members of the JMC resigned. The remaining two members invoked para. 2(2) of the First Schedule to the 2007 Act to appoint three new members, bringing the total number of members to five. The Commissioner of Buildings stated that pursuant to para 2(2) of the First Schedule, the JMB was still valid despite comprising only two members. The Commissioner further stated that the remaining members were authorised to appoint new members until the next AGM. In consequence, the EGM scheduled for 7 February 2015 was called off. In May 2015 four members resigned, leaving the appellant as the lone member of the JMC. The first respondent then gave notice pursuant to s. 10(2) of the 2007 Act for the requisition of an extraordinary general meeting ('EGM') for *inter alia*, the election of new members of the JMC. At that EGM, the second to the eighth respondents were appointed as the new committee members for the JMC. The appellant challenged the validity of the appointment of the new members contending that the EGM was invalid as it was conducted

under the 2007 Act which was repealed and replaced by the Strata Management Act 2013. The respondents subsequently filed an originating summons seeking determination of the court on two primary questions of law, namely (i) when the committee members of the JMC fell below five in number, whether the remaining members had any power or authority to elect new members pursuant to para. 2(2) of the 2007 Act; and (ii) whether the election of the JMC members at the EGM was valid having regard to the fact that the EGM was called pursuant to the 2007 Act which was already repealed at the material time of the EGM. According to the High Court Judge ('the HCJ'), the vacancy in the JMC could only be filled by way of an EGM requisitioned specifically to appoint new members of the JMC. Consequently, the HCJ pronounced that the JMC had no authority to appoint the earlier new members.

Held (allowing appeal with costs)
Per Mary Lim JCA delivering the judgment of the court:

(1) It is the clear dictate of Parliament that the vacancy caused by any of the events mentioned in para. 2(1) is meant to be filled up temporarily until the next AGM at which time, new members mentioned in s. 11(2) would be elected. Such appointment was not 'permanent'; in fact, it was not even for the balance of term of the relevant member(s) who had resigned. It was until the next AGM where an election, as opposed to an appointment, would take place. This reading allows for a harmonious and consistent reading of all the provisions of s. 11, including the details which are found in the First Schedule. While members of the JMC who were elected at the AGM continue to be members for a period of three years, such membership ceases upon the occurrence of any of the events mentioned in para. 2(1). Paragraph 2(2) is intended to cover for such events, regardless whether it was for a single vacancy or more. It was also immaterial that the number of remaining members fell below five or was left with just a solo member. (paras 33 & 34)

(2) In his judgment, the HCJ had concluded that para. 2(2) could be deployed the moment the quorum of the JMC fell below the minimum number of five. The present court disagreed. The construction and interpretation of the HCJ was plainly erroneous as it did not abide by the settled basic principles of statutory interpretation. It was not open to the court to read into the statute words or meaning which were not in the language used. The interpretation of the HCJ to ss. 11(1) and (4) as well as para. 2(2) of the First Schedule was to effectively read para. 2(2) subject to the terms of s. 11(1). The present court did not agree with such a construction. (para 35)

(3) Having examined the language in s. 11(1) and reading that provision with s. 11(4) and para. 2(2) of the First Schedule, these provisions allow the remaining members, even if that remaining member was only one, to appoint new members to fill a vacancy under para. 2(1). However,

that new member who was appointed under such conditions holds office only for the interim period until the next AGM at which time, new elections for the vacancy would take place. (para 41)

(4) The earlier appointments by the remaining members of the JMC were therefore valid. Consequently, the decision of the HCJ on this first question was clearly erroneous and must be set aside. (paras 45 & 46)

(5) As far as s. 37(2) was concerned, this subsection only saves acts which have already been done or operated before 1 June 2015. Section 37(2) does not save acts which have yet to operate or be done. The EGM held on 13 June 2013 fell squarely outside the plain language of s. 37(2). (para 59)

(6) On a proper reading of s. 37 and the other provisions of Chapter 5, while the notice issued on 27 May 2015 may be saved, it is nevertheless no longer effective. The moment the 2013 Act came into operation, the notice had no effect. For the notices to be effective and for any EGM to be conducted by reason of the call in the notice, fresh notices, including those calling for an EGM or AGM, under the new Act must be issued. Since no new notices were issued, the EGM and the appointments made therein would be invalid. The judge had therefore misdirected himself on the law and the orders sought by the respondents were consequently plainly erroneous in law and ought not to have been granted. (paras 60, 62 & 64)

Bahasa Malaysia *Headnotes*

Perayu dan responden adalah pemilik hartanah yang dikenali sebagai 'JMB Silverpark Resort, Bukit Fraser'. Di bawah s. 4 Akta Bangunan dan Harta Bersama (Penyenggaraan dan Pengurusan) 2007 ('Akta 2007'), badan pengurusan bersama ('JMB') diwujudkan. Kemudian JMB memilih jawatankuasa pengurusan bersama ('JMC'). Selaras dengan Mesyuarat Agung Tahunan ('AGM'), perayu bersama-sama dengan empat orang lagi dipilih sebagai ahli JMC. Di bawah s. 11(1) Akta 2007, ahli-ahli JMC memegang jawatan selama tempoh tidak melebihi tiga tahun atau sehingga pembubaran JMB mengikut s. 15, yang mana lebih awal. Pada November 2014, tiga daripada lima ahli JMC meletak jawatan. Dua orang ahli yang lain mengguna pakai perenggan 2(2) Jadual Pertama Akta 2007 untuk melantik tiga ahli baru, menjadikan jumlah ahli sebanyak lima. Pesuruhjaya Bangunan menyatakan bahawa menurut perenggan 2(2) Jadual Pertama, JMB masih sah walaupun hanya terdiri daripada dua orang ahli. Pesuruhjaya selanjutnya menyatakan bahawa ahli-ahli yang masih ada diberi kuasa untuk melantik ahli baru sehingga AGM berikutnya. Oleh itu, EGM yang dijadualkan pada 7 Februari 2015 ditangguhkan. Pada bulan Mei 2015, empat ahli lagi meletak jawatan, meninggalkan perayu sebagai ahli tunggal JMC. Responden pertama kemudian memberikan notis menurut s. 10(2) Akta 2007 bagi memohon suatu Mesyuarat Agung Luar Biasa ('EGM') antara lain, untuk

memilih ahli baharu JMC. Pada EGM tersebut, responden kedua hingga kelapan dilantik sebagai ahli jawatankuasa baharu JMC. Perayu mencabar kesahihan pelantikan ahli baharu dan berpendapat bahawa EGM tersebut adalah tidak sah kerana telah dijalankan bawah Akta 2007 yang telah dimansuhkan dan digantikan oleh Akta Pengurusan Strata 2013. Responden kemudiannya memfailkan saman pemula untuk mendapatkan keputusan mahkamah bagi dua soalan utama iaitu, (i) apabila ahli jawatankuasa JMC kurang daripada lima, sama ada ahli yang tinggal mempunyai kuasa atau autoriti untuk memilih ahli baharu menurut perenggan 2(2) Akta 2007; dan (ii) sama ada pemilihan ahli-ahli JMC di EGM adalah berpatutan memandangkan EGM telah dipanggil menurut Akta 2007 yang telah dimansuhkan. Menurut Hakim Mahkamah Tinggi ('HMT'), kekosongan dalam JMC hanya boleh diisi melalui EGM yang diminta khusus untuk melantik anggota baharu JMC. Oleh itu, HMT mengumumkan bahawa JMC tidak mempunyai kuasa untuk melantik anggota baharu terdahulu.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Mary Lim HMR menyampaikan penghakiman mahkamah:

(1) Adalah peruntukan Parlimen yang jelas bahawa kekosongan yang disebabkan oleh mana-mana peristiwa yang disebutkan dalam perenggan 2(1) bertujuan untuk diisi buat sementara waktu sehingga AGM yang akan datang, di mana ahli baru nombor yang disebutkan dalam s. 11(2) akan dipilih. Pelantikan sedemikian tidak 'kekal'; sebenarnya, ia bukan untuk baki tempoh ahli-ahli yang telah meletak jawatan. Ia adalah sehingga AGM seterusnya di mana pilihan raya, bertentangan dengan pelantikan, akan berlaku. Bacaan ini membolehkan pembacaan harmoni dan konsisten semua peruntukan s. 11, termasuk butiran yang terdapat dalam Jadual Pertama. Sementara ahli JMC yang dipilih di AGM terus menjadi ahli selama tiga tahun, keahlian sedemikian terhenti apabila berlakunya mana-mana kejadian yang disebutkan dalam perenggan 2(1). Perenggan 2(2) bertujuan untuk menampung apa-apa kejadian, tidak kira sama ada untuk satu kekosongan atau lebih. Ia juga tidak penting bahawa jumlah ahli yang tinggal kurang daripada lima atau hanya dengan seorang ahli solo.

(2) Dalam penghakimannya, HMT telah membuat kesimpulan bahawa perenggan 2(2) boleh digunakan pada masa kuorum JMC kurang daripada jumlah minimum, iaitu, lima. Mahkamah ini tidak bersetuju. Pembentukan dan tafsiran HMT adalah jelas salah kerana tidak mematuhi prinsip asas tafsiran statutori. Tidak terbuka kepada mahkamah untuk membaca perkataan atau makna undang-undang yang tidak terkandung dalam bahasa yang digunakan. Tafsiran HMT terhadap ss. 11(1) dan (4) serta perenggan 2(2) Jadual Pertama adalah untuk membaca perenggan 2(2) tertakluk kepada terma s. 11(1). Mahkamah ini tidak bersetuju dengan pembentukan sedemikian.

(3) Setelah meneliti bahasa dalam s. 11(1) dan membaca peruntukan tersebut dengan s. 11(4) dan perenggan 2(2) Jadual Pertama, peruntukan ini membenarkan ahli berbaki, walaupun ahli berbaki hanya satu, melantik ahli baharu untuk mengisi kekosongan di bawah perenggan 2(1). Walau bagaimanapun, ahli baharu yang dilantik bawah keadaan sedemikian memegang jawatan hanya untuk tempoh interim sehingga AGM seterusnya, yang pada masa itu, pemilihan baharu untuk kekosongan akan berlaku.

(4) Pelantikan ahli-ahli terdahulu oleh ahli-ahli yang masih ada adalah sah. Oleh itu, keputusan HMT untuk persoalan pertama adalah salah dan harus diketepikan.

(5) Berkenaan s. 37(2), subseksyen ini hanya menyelamatkan perbuatan yang telah dilakukan atau dikendalikan sebelum 1 Jun 2015. Seksyen 37(2) tidak menyelamatkan perbuatan yang masih belum dijalankan atau dilakukan. EGM yang diadakan pada 13 Jun 2013 terjumlah luar bahasa biasa s. 37(2).

(6) Bacaan yang betul s. 37 dan peruntukan lain Bab 5 menunjukkan bahawa walaupun notis yang dikeluarkan pada 27 Mei 2015 boleh diselamatkan, namun ia tidak lagi efektif. Pada masa Akta 2013 mula berkuat kuasa, notis tersebut tidak berkuat kuasa. Untuk notis-notis berkuat kuasa dan untuk mana-mana EGM yang akan dijalankan oleh sebab panggilan dalam notis, notis baharu, termasuk yang memanggil EGM atau AGM, bawah Akta baru mesti dikeluarkan. Memandangkan tiada notis baru dikeluarkan, EGM dan pelantikan yang dibuat dalamnya adalah tidak sah. Oleh itu, HMT telah terkhilaf pentafsirannya pada undang-undang dan perintah yang dipohon oleh responden secara jelas salah dan tidak sepatutnya diberikan.

Case(s) referred to:

All Malayan Estates Staff Union v. Rajasegaran & Ors [2006] 4 CLJ 195 FC ***(refd)***

Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd [2013] 1 CLJ 24 FC ***(refd)***

Channel Collieries Trust Limited v. Dover, St Margaret's and Martin Mill Light Railway Company [1914] Ch 506 ***(refd)***

Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26 FC ***(refd)***

Legislation referred to:

Building and Common Property (Maintenance and Management) Act 2007, ss. 4(2), 10(2), (3), 11(1), (2), (3), (4), 15, First Schedule paras 2(1), (2), 10

Strata Management Act 2013, ss. 37(1), (2), 38, 42, 153

Interpretation Acts 1948 and 1967, s. 17A

Companies Clauses Consolidated Act 1845 [UK], ss. 89, 99

A *For the appellant - Gopal Sri Ram, David Yii & Damien Chan; M/s Raja Badrol, Ramli & Azizi*
For the respondents - Subramaniyan A Nambiar; M/s Subramaniyan

[Editor's note: Appeal from High Court, Kuala Lumpur; Originating Summons No: 24NCVC-1047-07-2015 (overruled).]

B *Reported by Sandra Gabriel*

JUDGMENT

Mary Lim JCA:

C **[1]** This appeal concerns a narrow point of interpretation of specific legislation, namely the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) ("the 2007 Act") and the Strata Management Act 2013 (Act 757) ("the 2013 Act"). We allowed the appeal after careful consideration of the submissions and more importantly, our understanding and interpretation of the law.

D

Factual Background

[2] The appellant and the respondents are owners of their respective parcels in a property known as "JMB Silverpark Resort, Bukit Fraser". Under s. 4 of the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) ("the 2007 Act"), a joint management body (JMB) was first established. As its name suggests, it was for the purpose of *inter alia* managing the building, that is, JMB Silverpark Resort. The JMB then elected a joint management committee (JMC).

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F **[3]** Pursuant to an annual general meeting on 28 October 2014, the appellant together with four others were elected members of the JMC. Under s. 11(1) of the 2007 Act, the members of the JMC hold office for a period not exceeding three years or until the dissolution of the JMB in accordance with s. 15, whichever is earlier.

G **[4]** On three different dates in November 2014, three of the five members of the JMC resigned. The remaining two members invoked para. 2(2) of the First Schedule to the 2007 Act to appoint three new members, bringing the total number of members to five.

H **[5]** The first respondent took the position that the resignations left the JMC without quorum and referred the matter to the Commissioner of Buildings in November 2014. The Commissioner's first response on 20 January 2015 was to authorise the conduct of an EGM to appoint a JMB under s. 10(3) of the 2007 Act stating further that the persons appointed will hold office for a period of three years or until the dissolution of the JMB under s. 11(2) – see p. 152 of the record of appeal 2/2. An EGM was then scheduled for 7 February 2015.

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[6] However, by letter dated 3 February 2015, the Commissioner retracted his authorisation stating this time that pursuant to para. 2(2) of the First Schedule, the JMB was still valid despite comprising of only two members. The Commissioner further stated that the remaining members were authorised to appoint new members until the next AGM.

[7] As a result of this letter, the EGM scheduled for 7 February 2015 was called off.

[8] In May 2015, four members resigned, the last member leaving on 26 May 2015. With these resignations, the appellant was left as the lone member of the JMC.

[9] On 27 May 2015, the first respondent gave notice pursuant to s. 10(2) of the 2007 Act for the requisition of an extraordinary general meeting (EGM) for *inter alia*, the election of new members of the JMC. It would appear that this requisition was not referred to the Commissioner, unlike the earlier EGM of 7 February 2015.

[10] The EGM was scheduled for 13 June 2015. The EGM proceeded as scheduled. At that EGM, the second to the eighth respondents were appointed as the new committee members for the JMC.

[11] The appellant maintained that he remained as chairman of the JMC despite the vacancies. He further challenged the validity of the appointment of the new members contending that the EGM was invalid as it was conducted under the 2007 Act which was repealed and replaced by the Strata Management Act 2013 with effect from 1 June 2015.

[12] The respondents filed an originating summons seeking determination of the court on two primary questions of law, namely:

(i) When the committee members of the JMC falls below five in number, whether the remaining members have any power or authority to elect new members pursuant to para. 2(2) of the 2007 Act;

(ii) Whether the election of the JMC members at the EGM on 13 June 2015 was valid having regard to the fact that the EGM was called pursuant to the 2007 Act which was already repealed at the material time of the EGM.

[13] The learned judge answered both questions in the affirmative.

[14] We note that neither party has referred the decisions of the then Commissioner of Buildings found in letters dated 20 January 2015 and 3 February 2015 respectively for determination. Those letters will be referred to in this appeal, only for the purpose of record.

A **Section 11 Of The 2007 Act**

[15] The first question concerns the interpretation and application of s. 11 of the 2007 Act which reads as follows:

11. Joint Management Committee

B (1) The Body shall elect a Joint Management Committee who, subject to any restriction imposed or direction given by the Body at a general meeting, may perform the Body's duties and conduct the Body's business on its behalf, and may for that purpose exercise any of the Body's powers.

C (2) The Committee shall consist of the developer and not less than five and not more than twelve purchasers, who shall be elected at the annual general meeting of the Body and shall hold office for a period not exceeding three years or until dissolution of the Body in accordance with section 15 whichever is earlier.

D (3) From among the members of the Committee elected under subsection (2), there shall be elected a chairman, a secretary and a treasurer.

(4) The provisions of the First Schedule shall apply to the Committee.

(5) The State Authority may amend the First Schedule by order
E published in the *Gazette*.

[16] Insofar as the First Schedule is concerned, paras. 2 and 10 are relevant and they read as follows:

2. Continuation of office.

F (1) A person shall continue to be a member of the Committee until that person:

(a) resigns;

(b) dies;

G (c) becomes a bankrupt; or

(d) is no longer a purchaser.

(2) Where any vacancy occurs in the Committee, the remaining members shall appoint another purchaser to be a member until the next annual general meeting of the Body.

H 10. Validity of acts and proceedings

No act done or proceedings taken under this Act shall be questioned on the ground of:

(a) any vacancy in the membership of, or any defect in the constitution
I of the, Committee;

(b) contravention by any member of the Committee of the provisions of paragraph 8; or

(c) any omission, defect or irregularity not affecting the merits of the case.

[17] Learned counsel for the appellant submitted that para. 2(2) read with para. 10 of the First Schedule allowed the appellant and the other remaining members to appoint other purchasers as members until the next general meeting of the joint management body. This argument was rejected by the learned judge.

[18] Learned counsel for the respondents contended otherwise, arguing that the moment the membership of the JMC fell below the statutory minimum of five, that committee no longer had the capacity to appoint any new committee members. Under such circumstances, para. 2(2) could not be invoked.

[19] The learned judge agreed with the respondents, forming the view that while para. 2(2) of the First Schedule of the 2007 Act allowed for the appointment of new committee members of the JMC, that was only available where the JMC is itself validly constituted with a statutory minimum of five in the first place. The moment that statutory minimum is breached, there was no power to appoint any committee member. In the view of the learned judge, when the statutory minimum is not met, the JMC "tidak boleh berfungsi dan ahli yang tinggal tidak mempunyai wibawa (authority) atau kuasa untuk melaksanakan tugas-tugas JMC atau JMB, termasuk melantik ahli tambahan". The learned judge decided that at that point, "JMC akan terbatal kewujudannya apabila jumlah ahli di kalangan pemilik/pembeli menjadi kurang dari lima orang." From that moment, the JMC will cease to validly exist.

[20] According to the learned judge, the vacancy in the JMC could only be filled by way of an EGM requisitioned specifically for that purpose – to appoint new members of the JMC. Consequently, the learned judge pronounced that the JMC had no authority to appoint the earlier new members on 29 November 2014, 28 January 2015 and on 14 February 2015.

[21] We disagree. To start with must be the question of which is the applicable law given that the 2007 Act has been repealed and replaced with a new piece of legislation, the Strata Management Act 2013 with effect from 1 June 2015. In our view, it depends on what the question is.

[22] Since the appointments under challenge were those made while the 2007 Act was in force, the applicable law must be the 2007 Act.

[23] When interpreting any statute, there are certain basic principles that apply. The Federal Court in *Chin Choy & Ors v. Collector of Stamp Duties* [1978] 1 LNS 26; [1979] 1 MLJ 69 reminded on those basic principles:

> It may be apposite at this stage to recall certain basic principles in the interpretation of statues. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

> It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed,

per Bayley J in *R v. Ramsgate (Inhabitants)* [1827] 6 B&C 712. We bear in mind the well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language (see Maxwell on the *Interpretation of Statutes*, 11th Edn, at p. 278), but this rule of law also means that where the language of an Act of Parliament clearly imposes a charge, then the Court fastened with the duty not merely to interpret that Act but also to apply the law must give expression to the will of Parliament.

[24] Where the words used by Parliament are clear and unambiguous, the provision must be given effect – see Federal Court's decision in *All Malayan Estates Staff Union v. Rajasegaran & Ors* [2006] 4 CLJ 195; [2006] 6 MLJ 97, which was cited with approval by the Federal Court subsequently in *Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd* [2013] 1 CLJ 24; [2013] 1 MLJ 449. At p. 35 (CLJ); p. 458 (MLJ), although the Federal Court was there dealing with the application of the purposive approach in statutory interpretation under s. 17A of the Interpretation Acts 1948 and 1967, the Federal Court also explained on the general approach to statutory interpretation:

> On the proper application of the provision of the said s. 17A of the Interpretation Act we would refer to the case of *All Malayan Estates Staff Union v. Rajasegaran & Ors* [2006] 4 CLJ 195; [2006] 6 MLJ 97 wherein this court had laid down the principles, *inter alia*, as follows:
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> > In summarising the principles governing the application of the purposive approach to interpretation, *Craies on Legislation* (8th Ed), says at p 566:
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> > (1) Legislation is always to be understood first in accordance with its plain meaning.
> >
> > (2) Where the plain meaning is in doubt the courts will start the process of construction by attempting to discover, from the provisions enacted, the broad purpose of the legislation.
> >
> > (3) Where a particular reading would advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt that reading.
> >
> > (4) Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.
> >
> > (5) Where the courts conclude that the underlying purpose of the legislation is insufficiently plain, or cannot be advanced without any unacceptable degree of violence to the language used, they

> will be obliged, however regretfully in the circumstances of a particular case, to leave to the legislature the task of extending or modifying the legislation.

[25] In our deliberations in this appeal, we abide by those time-honoured and time-tested canons of proper statutory interpretation in reaching our conclusions and consider whether the learned judge had followed those same principles when determining the two questions posed.

[26] First, the joint management body, JMB. It is established under s. 4 of the 2007 Act. Amongst the duties of the JMB is the election of a joint management committee, JMC, under s. 11 of the 2007 Act. Subject to any restriction or direction imposed or given by the JMB at a general meeting, the JMC actually almost steps into the shoes of the JMB. Under s. 11(1), the JMC performs the JMB's duties, conducts the JMB's business and exercises any of the JMB's powers.

[27] The composition of the JMC is provided by s. 11(2). It states that the JMC "shall consist of the developer and not less than five and not more than twelve purchasers, who shall be elected at the annual general meeting of the Body". These elected members "hold office for a period not exceeding three years or until the dissolution of the Body in accordance with s. 15, whichever is earlier". Section 11(3) further provides that the chairman, secretary and the treasurer are to be appointed from among the members of the JMC.

[28] Section 11(4) provides that the provisions of the First Schedule "shall apply to the committee". In other words, in the reading and interpretation of s. 11, the terms of the First Schedule must be heeded. This is from the use of the mandatory term "shall" in s. 11(4), that the First Schedule shall apply to the committee, that is, the JMC.

[29] The First Schedule contains detailed provisions for the proper workings and business of the JMC. It contains provisions dealing with various matters such as the times and places of the meetings that the JMC is expected to conduct, quorum, minutes, resolutions, procedure, and for "continuance of office" or status of membership.

[30] Paragraph 2 specifically deals with that status of membership. Under para. 2(1), a member continues to be a member until the occurrence of any of the four specified events: resignation, death, bankruptcy and where the member is no longer a purchaser of the property. Upon the occurrence of any of these events, the member ceases to be a member.

[31] Paragraph 2(2) goes on to provide for what happens to the remaining members and what may be done in the event some member ceases to be a member by reason of resignation, death, bankruptcy or cessation of status as purchaser. It provides for the filling of that vacancy by appointment by the remaining members of the JMC.

[32] The power of the remaining members to make that appointment under such conditions is however, subject to the express qualifying term - that the member who is appointed under such conditions holds office "until the next annual general meeting of the Body". The power of the remaining members to appoint a new member to the JMC is a qualified or limited power in that it can only be done for the reasons specified in para. 2(1) and for the period mentioned in para. 2(2).

[33] In our view, this reading and interpretation is plain and clear from the terms of the provisions under scrutiny. It is the clear dictate of Parliament that the vacancy caused by any of the events mentioned in para. 2(1) is meant to be filled up temporarily until the next AGM at which time, new members of the numbers mentioned in s. 11(2) will be elected. Such appointment is not "permanent"; in fact, it is not even for the balance of term of the relevant member(s) who has, on the facts, resigned. It is until the next AGM where an election, as opposed to an appointment, will take place.

[34] This reading allows for a harmonious and consistent reading of all the provisions of s. 11, including the details which are found in the First Schedule. While members of the JMC who are elected at the AGM continue to be members for a period of three years, such membership ceases upon the occurrence of any of the events mentioned in para. 2(1). Paragraph 2(2) is intended to cover for such events, regardless whether it is for a single vacancy or more. It is also immaterial that the number of remaining members fall below five or is left with just a solo member, as is the case in the present appeal.

[35] In his judgment, the learned judge had concluded that para. 2(2) cannot be deployed the moment the quorum of the JMC fell below the minimum number of five. With respect, we must disagree. We find the construction and interpretation of the learned judge to be plainly erroneous as it does not abide by the settled basic principles of statutory interpretation. It is not open to the court to read into the statute words or meaning which are not in the language used. In our view, the interpretation of the learned judge to ss. 11(1) and (4) as well as para. 2(2) of the First Schedule is to effectively read para. 2(2) subject to the terms of s. 11(1). With respect, we cannot agree to such a construction. As explained above, none of the provisions warrant such a construction.

[36] Furthermore, we also note that s. 11(4) is not qualified by any other section, especially s. 11(1). In other words, there are no opening words of qualification or reservation such as "subject to"; that one would generally see drafted if that was the intention of Parliament. Where there are no reservations within the terms of the provision itself, the court must never read into the provision the presence of such reservations or restrictions, unless of course, the reading leads to absurdity or does violence to the language used. In our view, s. 11(2) deals with the election of the members

of the JMC at an AGM. Any vacancy following such an AGM is meant to be dealt with according to para. 2. Any action or measure taken under para. 2 is always temporary until the next AGM. In fact, by necessary inference, there is no need to convene any EGM to deal with any vacancy.

[37] Learned counsel for the appellant has urged upon this court the approach adopted by the English Court of Appeal in *Channel Collieries Trust Limited v. Dover, St Margaret's and Martin Mill Light Railway Company* [1914] 2 Ch 506. In that case involving corporations, the number of directors fell below the minimum prescribed. The issue was whether the remaining director could appoint new directors under ss. 89 and 99 of the Companies Clauses Consolidated Act 1845. Those provisions read as follows:

> 89. Supply of occasional vacancies in office of directors.
>
> If any director die, resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper to do so, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long as only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.
>
> 99. Informalities in appointment of directors not to invalidate proceedings.
>
> All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every person had been duly appointed and was qualified to be a director.

[38] The Court of Appeal answered in the affirmative with Lord Cozen-Hardy MR explaining the reasons for the conclusion in the following terms as seen at p. 510:

> There were three directors, Sir WH Crundall, Lord Cowdray, and Sir John Jackson. The number of directors was originally to be five, but that number was properly reduced to three, of which two were to form a quorum. There was a qualification of shares for the directors. For reasons which do not concern us Lord Cowdray and Sir WH Crundall were minded to retire; they transferred their shares and ceased to be eligible to act as or to be directors of the company. Sir John Jackson thus become sole director. What was his power? Under the Companies Clauses Act 1845, as continuing director, he had power to fill up vacancies on the board. The fact that a person exercising that power does not constitute a quorum is not really a relevant matter. The generality of the language used in s. 99 is so clear that it is impossible for us to overlook it. Any other view on that point would paralyse many a company. It is very common indeed to have a company the directors of which are merely the quorum, and therefore, unless there is a power for the continuing director or

A directors to fill up a vacant place in the directorate, the company would be at a deadlock, and nothing could be done except by the intervention of the Court in the manner suggested by Mellish LJ in *Macdougall v. Gardiner*, an intervention which seems to me rather difficult to justify except on the ground of absolute necessity. 1 think, therefore, that Sir John Jackson had power to fill up the vacancy caused by the retirement
B of his two colleagues.

[39] We appreciate that the above arguments were made in the context of a vacancy in the board of directors, and that the decision also does not involve a situation where legislation has provided for certain minimum number of members. However, the analogy and reliance on the above
C authority is not at all, misplaced. The JMC is, indeed, akin to a board of directors in a company. In fact, there is specific provision in the 2007 Act to this effect.

[40] Under s. 4(2), the JMB is "a body corporate having perpetual succession and a common seal". As pointed out earlier, under s. 11(1), the
D JMC, elected by the JMB, performs the JMB's duties, conducts the JMB's business and exercises any of the JMB's powers. Consequently, we are inclined to adopt and follow the interpretation and approach of the English Court of Appeal in *Channel Collieries Trust Limited*.

E **[41]** In our view, having examined the language in s. 11(1) and reading that provision with s. 11(4) and para. 2(2) of the First Schedule, we further find that those provisions allow the remaining members, even if that remaining member is only one, to appoint new members to fill a vacancy under para. 2(1). However, that new member who is appointed under such
F conditions holds office only for the interim period until the next AGM at which time, new elections for the vacancy will take place. At that next AGM, if it so happens that the whole three-year term of the entire JMC has expired, then an entirely new JMC has been elected. This, does not appear to arise in this case.

G **[42]** In our view, this power to fill this interim vacancy is only a temporary measure. Such powers to make temporary arrangements must have been intended to allow for the business of the JMC to be conducted with minimum disruption.

[43] We are of the further view that the reading suggested by the
H respondent and reached by the learned judge, is plainly erroneous as it renders not only para. 2(2) redundant; but gives it a construction which runs contrary to the clear language in ss. 11(1) and (4). AGMs or even EGMs should not be conducted for the business of filling up a vacancy in the JMC whenever the number of members fall below five. More so when the
I duration of term as a member of the JMC is for three years and not, one year, which is how often AGMs are held.

[44] Before leaving this first question, we return to the two letters written by the Commissioner of Buildings. In the second of the two letters, the Commissioner actually acknowledged that he was in error in his interpretation of the application of s. 11(1) and that para. 2 applies. We add this not that we require the support of the Commissioner for our view as expressed above, but to indicate that there was no challenge on the Commissioner's position.

[45] Given our answer to the first question, the earlier appointments by the remaining members of the JMC are therefore valid. As a further corollary to our decision, as the sole remaining member elected at the last AGM of 28 October 2014, the appellant has authority and power under para. 2(2) to appoint new members, but such new members will only hold office until the next AGM.

[46] Consequently, the decision of the learned judge on this first question is clearly erroneous and must be set aside.

The EGM

[47] We move next to the second question and this concerns the validity of both the EGM and the election of the second to the eighth respondents as the new committee members of the JMC.

[48] The facts again were these – the first respondent had, on 26 May 2015, requisitioned for an EGM under the 2007 Act. With effect from 1 June 2015, the Strata Management Act 2013 (2013 Act) came into force. The EGM, requisitioned under the 2007 Act was conducted on 13 June 2015, under the terms of the 2007 Act. The second to the eighth respondents were elected as new members in that EGM.

[49] There are actually two aspects to this question: the validity of the notice as well as the validity of the EGM and thereby the appointment of the new members to the JMC.

[50] The learned judge did not make any distinction between these two aspects. Instead, the learned judge went directly to the question of the validity of the EGM by reference to s. 37(2) of the 2013 Act. The learned judge agreed with the contention of the respondent that the EGM and the election of new members were valid by virtue of s. 37(2) of the 2013 Act. The appellant contended otherwise; that s. 37(2) is intended to deal with acts which were done before the 2013 Act came into operation. Since the EGM was conducted after the 2013 Act came into force, s. 37(2) does not apply.

[51] We find the submissions of the appellant in this respect of merit.

[52] Although the 2013 Act received royal assent on 5 February 2013, it did not come into force until 1 June 2013. With the enactment of the 2013 Act, the 2007 Act was repealed – see s. 153.

[53] Amongst the new concepts under the 2013 Act is the establishment of a strata management corporation in place of the JMB and JMC. We do not propose to deal with those matters in this appeal. What is relevant for the purpose of this appeal is the question of the validity of acts done under the repealed law and to what extent are those acts saved. Put in another way, can an EGM called under the 2007 Act be nevertheless conducted under that Act when at the time of the EGM, the 2007 Act has been repealed and replaced by the 2013 Act?

[54] With the inception of the concept of strata management corporations under the 2013 Act, Parliament decided to deal with the oft-tricky issue of transitional and savings matters; what happens to and how does one deal with existing bodies and committees established under the previous regime, that is, under the 2007 Act; and pending matters etc. And, it does so in Part IV of the 2013 Act especially in Chapter 5. This chapter contains specific transitional and savings provisions due to the repeal of the 2007 Act.

[55] Chapter 5 has provisions dealing with the effect of the new Act on nine specific matters:

(i) s. 37 - references to repealed Act and savings provision

(ii) s. 38 - existing body and committee

(iii) s. 39 - existing managing agent

(iv) s. 40 - existing accounts or funds

(v) s. 41 - incumbent Commissioner of Buildings and other officers

(vi) s. 42 - existing notices, orders etc.

(vii) s. 43 - pending applications

(viii) s. 44 - pending appeals

(xi) s. 45 - existing regulations

[56] Broadly, the effect of these provisions is to deem these various matters done under the 2007 Act to be matters done or carried out under the new Act. However, the sections must be carefully examined in order to appreciate their application. In this case, the learned judge only looked at s. 37 and even then, it was only s. 37(2). We find that the learned judge failed to take into consideration the whole of s. 37 as well as ss. 38 and 42. Had His Lordship considered those provisions, it will be clear that the reading suggested by the respondent was untenable.

[57] Section 37 reads as follows:

> References to repealed Act and savings provision
>
> 37. (1) All references to the repealed Act in any written law or document shall, when this Act comes into operation, be construed as references to this Act.

(2) Nothing in this Act shall affect the past operation of, or anything done under the repealed Act before the date of coming into operation of this Act.

[58] Having examined s. 37, it is our view that while s. 37(1) provides that any reference to the 2007 Act will now be construed as references to the 2013 Act, which means that the references in any of the documents or notices issued by the JMC may now be read to refer to the 2013 Act instead of the 2007 Act, that is as far as the transitional and savings provision provide. Regard must still be given to the other provisions in Chapter 5.

[59] As far as s. 37(2) is concerned, this subsection only saves acts which have already been done or operated before 1 June 2015. Section 37(2) does not save acts which have yet to operate or be done. In our consideration, if at all there is any savings under s. 37(2), it is only of the notice issued on 27 May 2015, but certainly not of the EGM held on 13 June 2013 as that act falls squarely outside the plain language of s. 37(2).

[60] On a proper reading of s. 37 and the other provisions of Chapter 5, we are further, of the considered opinion that while the notice issued on 27 May 2015 may be saved, it is nevertheless no longer effective. The moment the 2013 Act came into operation, the notice has no effect. This is because of the operation of ss. 38 and 42 of the 2013 Act which read as follows:

Existing body and committee

38. A Joint Management Body established or a Joint Management Committee elected under the repealed Act shall be deemed to have been established or elected under this Act except that after the commencement of this Act the provisions of this Act shall apply to such Body or Committee.

Existing notices, orders etc.

42. (1) Any notice, order, action, direction or other document prepared, issued or made by the Commissioner under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, continue and be deemed to have been prepared, issued or made under the corresponding provisions of this Act.

(2) Any decision made by the Commissioner under the repealed Act shall, in so far as it as it is not inconsistent with the provisions of this Act, continue and be deemed to have been made under the corresponding provisions of this Act.

[61] Under s. 38 of the 2013 Act, the JMC that was in existence and elected under the 2007 Act is deemed to exist under the new Act. Nevertheless, s. 38 goes on to provide that "after the commencement of this Act the provisions of this Act shall apply to such a Body or committee". In other words, the JMC cannot continue to act under the repealed 2007 Act. From 1 June 2015, the JMC must act under the new Act and this includes the matter of issuing notices etc for the purpose of requisitioning an EGM.

[62] For the notices to be effective and for any EGM to be conducted by reason of the call in the notice, it is our respectful view that fresh notices, including those calling for an EGM or AGM, under the new Act must be issued. This is because of the presence of a savings provision in s. 42 dealing specifically with notices. Section 42 saves notices, order, action or other document prepared, issued or made under the 2007 Act but only if the notices were prepared, issued or made by the Commissioner of Buildings. Such notices remain effective so long as they are not inconsistent with the provisions under the 2013 Act.

[63] Since notices issued or made by the JMC are not saved for effect, s. 37(2) is of no assistance to the respondents. Thus, with the coming into operation of the 2013 Act on 1 June 2013, new notices for convening an EGM must necessarily be issued.

[64] Since no new notices were issued, the EGM and the appointments made therein would be invalid. The learned judge had therefore misdirected himself on the law and the orders sought by the respondents were consequently plainly erroneous in law and ought not to have been granted.

[65] For all the reasons explained, we find that the decision of the learned judge requires appellate intervention. The appeal must therefore be allowed with costs and the decision of the High Court be set aside.